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Applicant: Darryl Hymel

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WITH DELAY ANNOUNCEMENTS

Examiner: Vu, Thong H.

Attorney

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APPELLANT'S BRIEF UNDER 37 CFR §1.192

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APPEAL BRIEF

In response to the Final rejection of June 5, 2003 and in support of the applicant's Notice of Appeal filed November 21, 2003, the applicant appeals as follows:

I. **Real Party in Interest.**

The real party in interest is Rockwell Electronic Commerce Corp, by assignment dated March 16, 2000 and recorded at Reel/Frame 010755/0197.

II. **Related Appeals and Interference.**

None.

III. **Status of Claims.**

Claims 1-41 have been rejected under 35 U.S.C. §103(a) as being obvious over U.S. Pat. No. 6,021,428 to Miloslavsky in view of U.S. Pat. No. 6,175,562 to Cave.

IV. **Status of Amendments.**

The claims have not been amended since the final Office Action of June 5, 2003.

V. **Summary of Invention.**

The invention is drawn to a method and apparatus for routing multimedia calls within an automatic call distribution system having an automatic call distributor coupled to the public switched telephone network and a host coupled to the Internet. FIG. 1 shows an automatic

call distributor (ACD) 14 coupled to the PSTN 12. FIG. 1 would also be understood to show the host 16 coupled to the Internet through the PSTN 12.

The method includes the step of receiving an Internet call from an Internet caller by a host through the Internet. In this regard, “a website user (also referred to herein as a caller) may request a conversation with an agent of the ACD system 10” (Specification, page 5, lines 1-3). To initiate the call, “A descriptive header 56 may be provided instructing the caller to activate a softkey 54 to initiate such conversation” (Specification, page 5, lines 3-6).

The method further includes the step of requesting an agent assignment for handling the Internet call from the automatic call distributor coupled to the public switched telephone network. A request for an agent assignment may be accomplished in a number of ways. For example, “With regard to e-mail messages or real-time conferences, the host 16 may send a simulated call request to the CPU 36 . . . The host 16 may send the call request over a TCP/IP connection 38 to a call application operating on the CPU 32 or may seize a connection on an incoming trunk 40 to the ACD 14 and send a set of simulated associated call information to the ACD 14” (Specification, page 6, lines 13-20).

The method also includes the step of transferring the Internet call to a terminal of the agent assigned by the automatic call distributor. In this regard, “the CPU 32 . . . assigns an agent to the call . . . sends a call completion message to the host 16 including an identifier of the selected agent . . . With the call completion message (and identity of the assigned agent) the host 16 may either forward the e-mail message from the caller or act to complete the real-time conference connection between the caller and assigned agent 22, 24” (Specification, page 6, lines 21-30).

VI. Issues.

Whether an Examiner may ignore the explicit limitations of a claim and otherwise hold obvious a claimed invention absent a recognition of the problem solved by the claimed invention.

VII. Grouping of Claims.

It is believed that the rejection of claims 1-41 is based upon the same common error. It is therefore requested that the claims be grouped together for the limited purpose of this appeal.

VIII. Argument.

A. Claim 1, upon which claims 2-13 rely, is drawn to "receiving an Internet call from an Internet caller by the host through the Internet; requesting an agent assignment for handling the Internet call from the automatic call distributor coupled to the public switched telephone network; and transferring the Internet call to a terminal of the agent assigned by the automatic call distributor". Claim 14, upon which claims 15-26 rely, and claim 27, upon which claims 28-34 rely, contain structural limitations drawn to similar subject matter. Claim 35, upon which claims 36-39 rely, also requires the method step of queuing calls in a common call queue. Claim 40 is drawn to method steps similar to claim 1, but is broader in not requiring the automatic call distributor to be connected to the public switched telephone network. Claim 41 is limited to conference calls.

In general, claims 1-41 are all limited to Internet calls. As described in the specification, an Internet call is a call initiated through the Internet to a website of a host by the Internet caller. In this regard, it is believed that neither Miloslavsky or Cave teach or suggest the routing of Internet calls.

In this regard, the Examiner admits (Office Action of 1/3/03, page 2) that Miloslavsky fails to teach any of the claimed elements of claim 1. As may be best understood from the Examiner's comments, since Miloslavsky does not teach any of the claimed elements, the Examiner is apparently suggesting that Cave somehow teaches or suggests the claimed invention. However, Cave is clearly shown as being connected to an Ethernet 220 instead of the Internet (Response of 3/11/03, page 3). Further, Cave operates in a fundamentally different way than that of the claimed invention.

For example, instead of Internet calls, the Cave invention is directed to the situation where "Standard POTS calls are received from the Public Switched Telephone Network ("PSTN"), whereupon a POTS/packet gateway digitizes the signal (if necessary) and compresses it . . . then converts the signal into a packetized format" (Cave, col. 3, line 62 to col. 4, line 1). Once converted into a packetized format and "Responsive to a call distribution algorithm identifying the next available agent by IP address, the caller's packetized voice signals are distributed to the agent over the Ethernet" (Cave, col. 4, lines 1-4; Response of 8/5/03, pages 3-4). Instead of Internet calls, Cave is directed merely to an Ethernet connection between the SCD 100 and agents. However, an Ethernet connection and an Internet call are two different concepts and the use of one does not teach or suggest the use of the other. Further, even if the Cave Ethernet connection were an Ethernet call (which it is not), it would still be an Ethernet call from the SCD 100, not an Internet call from an Internet caller.

The claimed invention is limited to "an Internet call from an Internet caller". As would be well understood in the art, an Internet call from an Internet caller would be understood to be an Internet call initiated by the human subscriber to the Internet. In contrast, Cave represents an Ethernet connection established for the convenience of the operator of the SCD resource 100.

For example, “When live agents LA₁-LA_n log on to make themselves available to receive calls, they send messages including their voice port and data port IP addresses over ethernet 220 to ACD application control 108” (Cave, col. 6, lines 48-52). Once an agent has logged-on “Call distribution algorithms in ACD application control 108 determine which of logged-on agents LA₁-LA_n is to receive the next call, and the caller’s packetized voice signals are directed via voice browser protocol 109 to the voice port IP address of the live agent to receive the call” (Cave, col. 6, lines 52-57; Response of 8/5/03, page 4). Since the Cave agents log on to the ACD application control 108 first, it is clear that the connection established is part of a continuous session with many different data exchanges involving different POTS calls directed to the same IP address of the agent. Further, since the agent logs-in for a session, the Ethernet connection between the agent and the ACD control application already exists and there is no routing of calls in the same sense as that of the claimed invention.

In addition, there is no separate host and ACD within an ACD system as under the claimed invention in either Miloslavsky or Cave. Since there is no separate host and ACD, there would be no reason under the teaching of Miloslavsky and Cave for a host to request an agent selection from the ACD, for the ACD to transfer the assignment to the host and for the host to transfer the Internet call to the selected agent.

B. A Prima facie Case of Obviousness Has Not Been Established

The Federal Circuit has continually held that the Examiner has the burden under 35 U.S.C. §103 of establishing a prima facie case of obviousness. In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992); In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). This burden may be satisfied only by showing some objective teaching in the prior art or that

knowledge generally available to one of ordinary skill in the art would lead that individual to the claimed invention. For example, as the Federal Circuit has held recently, as well as on numerous other occasions: "[t]here must be some reason, suggestion or motivation found in the prior art whereby a person of ordinary skill in the field of the invention would make the combination." In re Oetiker, supra, 24 USPQ2d at 1446.

Moreover, the mere fact that the prior art references could be modified in the manner proposed by the Examiner would not have made the modification obvious unless there is some motivation or suggestion in the prior art to do so. In re Gordon, 773 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984), also see In re Fritch, 972 F.2d 1260, 23 USPQ2d 1781, 1783 (Fed. Cir. 1992) (The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification).

When making an assessment of the obviousness of the claimed invention, the prior art, viewed as a whole, must "suggest the desirability, and thus the obviousness, of making the combination." In re Beattie, 974 F.2d 1309, 24 USPQ2d 1040 (Fed. Cir. 1992), quoting Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984). Similarly, the Examiner, under §103, must consider the claimed subject matter "as a whole". In assessing the claimed subject matter "as a whole", the results and advantages of the claimed invention must be considered. Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 7 USPQ2d 1315 (Fed. Cir. 1988); In re Chupp, 816 F.2d 643, 2 USPQ2d 143 (Fed. Cir. 1987).

It is incumbent upon the Examiner to demonstrate that the proposed combination of reference teachings is proper. Where no express teaching or suggestion is apparent from the

references, the Examiner must establish, with evidence or reasoning, why one skilled in the art would have been led by the relevant teachings of the applied references to make the proposed combination. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984); ACS Hospital System, Inc. v. Montefiorde Hospital, 732 F.2d 1572, 221 USPQ 929 (Fed. Cir. 1984). When making an obviousness rejection, "[i]t is impermissible, however, simply to engage in hindsight reconstruction of the claimed invention, using the applicant's structure as a template". In re Gorman, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991).

Applicant submits, upon a close examination of the record, that the Examiner has failed to meet the burden of establishing a *prima facie* case of obviousness. In general, the Examiner has failed to establish, with evidence or reasoning, why one skilled in the art would have been led by the relevant teachings of the applied references to make the proposed combination. Further, the Examiner has apparently engaged in hindsight reconstruction as demonstrated by his assertion that "Examiner notes the prior art taught a switchless ACD system distributes incoming calls to call agents network via a low cost data network using Web-enabled database tools and HTML server 120 [Cave, Fig. 2] . . . It is obvious that the network calls is Internet calls from Internet callers" (Advisory Action of 8/26/03, page 2); when, in fact, it is only the specification that teaches this element in a manner that could be understood and put to a practical use.

Further, the fact that the Examiner relies upon the above "simplified" version of the claims and disparate elements from unrelated patents such as Miloslavsky and Cave demonstrates that the Examiner has failed to consider the claimed subject matter "as a whole". The failure of the Examiner to consider the claimed subject matter "as a whole" is further demonstrated by the fact that none of the cited patents of the combination of Miloslavsky and

Cave is directed to solving or even recognizing the precise problem solved by the claimed invention. Since none of the cited patents are directed to a method or apparatus that allows for the routing of multimedia calls in an automatic call distribution system having a separate host and automatic call distributor, there would be no reason to combine the references in the manner suggested by the Examiner.

For the foregoing reasons, reversal of the rejections of claims 1-41, as now presented, is believed to be in order and such action is earnestly solicited.

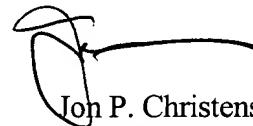
IX. CONCLUSION

For the foregoing reasons, allowance of claims 1-41, as now presented, is believed to be in order. It is respectfully requested that this Board reverse the decision of the Examiner in all respects.

Respectfully submitted,

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APPENDIX

Claims

1. A method of routing multimedia calls within an automatic call distributor system having a automatic call distributor coupled to the public switched telephone network and a host coupled to the Internet, such method comprising the steps of:
 - receiving an Internet call from an Internet caller by the host through the Internet;
 - requesting an agent assignment for handling the Internet call from the automatic call distributor coupled to the public switched telephone network; and
 - transferring the Internet call to a terminal of the agent assigned by the automatic call distributor.
2. The method of routing multimedia calls as in claim 1 further comprising queuing the request for an agent assignment.
3. The method of routing multimedia calls as in claim 1 wherein the step of queuing the request for an agent assignment further comprises estimating a time length of the queue.
4. The method of routing multimedia calls as in claim 3 wherein the step of estimating a time length of the queue further comprises transferring the estimated time to the Internet caller.
5. The method of routing multimedia calls as in claim 1 wherein the step of transferring the Internet call to the agent assigned by the automatic call distributor further comprises setting up a real-time Internet conference with the caller.

6. The method of routing multimedia calls as in claim 5 wherein the step of setting up the real-time Internet conference with the caller further comprises exchanging audio and text between the assigned agent and Internet caller through an interactive window.

7. The method of routing multimedia calls as in claim 5 wherein the step of setting up a real-time conference with the caller further comprises presenting an information screen to the caller about the real-time call.

8. The method of routing multimedia calls as in claim 5 wherein the step of presenting the information screen to the caller further comprises presenting an estimated time until an assigned agent will be available to participate in the conference.

9. The method of routing multimedia calls as in claim 5 wherein the step of presenting the information screen to the caller about the real-time call further comprises presenting an information request screen to the Internet caller.

10. The method of routing multimedia calls as in claim 5 wherein the step of presenting the information screen to the caller further comprises presenting an animated cartoon figure for entertaining the Internet caller while the caller waits for completion of setup of the real-time conference.

11. The method of routing multimedia calls as in claim 1 wherein the step of requesting an agent assignment for handling the Internet call from the automatic call distributor further comprises seizing a connection on an incoming trunk to the automatic call distributor and sending simulated call associated information to the automatic call distributor.

12. The method of routing multimedia calls as in claim 1 wherein the step of requesting an agent assignment for handling the Internet call from the automatic call distributor further comprises sending the request over a TCP/IP connection to a call application operating within the automatic call distributor.

13. The method of routing multimedia calls as in claim 12 wherein the step of transferring the Internet call to the agent assigned by the automatic call distributor further comprises connecting a telephone of the assigned agent to a dummy load to avoid assigning the assigned agent to another call during the Internet call.

14. A system for routing multimedia calls within an automatic call distributor system having a automatic call distributor coupled to the public switched telephone network and a host coupled to the Internet, such apparatus comprising:

means for receiving an Internet call from an Internet caller by the host through the Internet;

means for requesting an agent assignment for handling the Internet call from the automatic call distributor; and

means for transferring the Internet call to the agent assigned by the automatic call distributor.

15. The apparatus for routing multimedia calls as in claim 14 further comprising means for queuing the request for an agent assignment.

16. The apparatus for routing multimedia calls as in claim 14 wherein the means for queuing the request for an agent assignment further comprises means for estimating a time length of the queue.

17. The apparatus for routing multimedia calls as in claim 16 wherein the means for estimating a time length of the queue further comprises means for transferring the estimated time to the Internet caller.

18. The apparatus for routing multimedia calls as in claim 14 wherein the means for transferring the Internet call to the agent assigned by the automatic call distributor further comprises means for setting up a real-time Internet conference with the caller.

19. The apparatus for routing multimedia calls as in claim 18 wherein the means for setting up the real-time Internet conference with the caller further comprises means for exchanging audio and text between the assigned agent and Internet caller through an interactive window.

20. The apparatus for routing multimedia calls as in claim 18 wherein the means for setting up a real-time conference with the caller further comprises means for presenting an information screen to the caller about the real-time call.

21. The apparatus for routing multimedia calls as in claim 18 wherein the means for presenting the information screen to the caller further comprises means for presenting an estimated time until an assigned agent will be available to participate in the conference.

22. The apparatus for routing multimedia calls as in claim 18 wherein the means for presenting the information screen to the caller about the real-time call further comprises means for requesting information from the Internet caller.

23. The apparatus for routing multimedia calls as in claim 18 wherein the means for presenting the information screen to the caller further comprises means for presenting an animated cartoon figure for entertaining the Internet caller.

24. The apparatus for routing multimedia calls as in claim 14 wherein the means for requesting an agent assignment for handling the Internet call from the automatic call distributor further comprises means for seizing a connection on an incoming trunk to the automatic call distributor and sending simulated call associated information to the automatic call distributor.

25. The apparatus for routing multimedia calls as in claim 14 wherein the means for requesting an agent assignment for handling the Internet call from the automatic call distributor further comprises means for sending the request over a TCP/IP connection to a call application operating within the automatic call distributor.

26. The apparatus for routing multimedia calls as in claim 25 wherein the means for transferring the Internet call to the agent assigned by the automatic call distributor further comprises means for connecting a telephone of the assigned agent to a dummy load.

27. A system for routing multimedia calls within an automatic call distributor system having a automatic call distributor coupled to the public switched telephone network and a host coupled to the Internet, such apparatus comprising:

a host adapted to receive an Internet call from an Internet caller through the Internet;
an agent processor operating from within the host and adapted to request an agent assignment for handling the Internet call from the automatic call distributor; and
a routing processor adapted to transfer the Internet call to a terminal of the agent assigned by the automatic call distributor.

28. The apparatus for routing multimedia calls as in claim 27 further comprising a queuing processor adapted to queue the request for an agent assignment.

29. The apparatus for routing multimedia calls as in claim 27 wherein the routing processor further comprises an Internet conferencing protocol for setting up a real-time Internet conference with the caller.

30. The apparatus for routing multimedia calls as in claim 29 wherein the conferencing protocol further comprises an interactive window adapted to exchanging audio and text between the assigned agent and Internet caller through the Internet.

31. The apparatus for routing multimedia calls as in claim 29 wherein the conferencing protocol further comprises an information screen adapted to present information to the caller about the real-time call.

32. The apparatus for routing multimedia calls as in claim 29 wherein the information screen further comprises a timer adapted to provide an estimated time until an assigned agent will be available to participate in the conference.

33. The apparatus for routing multimedia calls as in claim 29 wherein the information screen further comprises an information entry window adapted to request information from the Internet caller.

34. The apparatus for routing multimedia calls as in claim 29 wherein the information screen to the caller further comprises an animated cartoon figure for entertaining the Internet caller.

35. A method of routing multimedia calls within an automatic call distributor system having a automatic call distributor coupled to the public switched telephone network and a host coupled to the Internet, such method comprising the steps of:

receiving an Internet call from an Internet caller by the host through the Internet;
requesting an agent assignment from the automatic call distributor; and
queuing the Internet call in a common call queue along with other calls received through the public switched telephone network based upon a time of arrival.

36. The method of routing multimedia calls as in claim 35 further comprising routing the Internet call to an assigned agent when the queued Internet call reaches a front of the queue.

37. The method of routing multimedia calls as in claim 35 wherein the step of routing the Internet call to an agent when the queued Internet call reaches a front of the queue further comprises sending an Internet address of the Internet caller to the assigned agent.

38. The method of routing multimedia calls as in claim further comprises estimating a time period before the queued Internet call will reach a front of the queue.

39. The method of routing multimedia calls as in claim 38 wherein the step of estimating a time period before the queued Internet call will reach a front of the queue further comprises transferring the estimate to the Internet caller.

40. A method of routing multimedia calls within an automatic call distributor system having an automatic call distributor coupled to the public switched telephone network and a host coupled to the Internet, such method comprising the steps of:

receiving an Internet call from an Internet caller by the host through the Internet;
requesting an agent assignment for handling the Internet call from the automatic call distributor;
and
transferring the Internet call to the agent assigned by the automatic call distributor.

41. A method of displaying information to a caller of an automatic call distributor, such method comprising the steps of:

receiving a request for a real-time conference from a caller;
sending a call request to the automatic call distributor for an agent to handle the real-time conference; and
presenting information to the caller as the caller waits for setup of the real-time conference.

TABLE OF AUTHORITIES

Cases

In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992)

In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)

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